

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 13 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

HENRY E. GOSSAGE,

Plaintiff - Appellant,

v.

STATE OF WASHINGTON; et al.,

Defendants - Appellees.

No. 04-35970

D.C. No. CV-03-05138-RJB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Submitted December 5, 2005**

Before: GOODWIN, TASHIMA, and FISHER, Circuit Judges.

Henry E. Gossage appeals pro se the district court's summary judgment in favor of the defendants in his 42 U.S.C. § 1983 action alleging discrimination in hiring on account of his race, former convict status, and disability. Gossage also

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

alleged that defendants violated his right to due process by not according him the veteran's preference provided by Wash. Rev. Code § 73.16.010. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (en banc), and we affirm.

The district court properly granted summary judgment on Gossage's claims arising from events that occurred before March 13, 2000, because they were time-barred. *See* Wash. Rev. Code § 4.16.080(2) (providing a three-year statute of limitations for personal injury actions).

The district court properly found that the tie-breaking preference created by Wash. Rev. Code § 73.16.010 did not create a federally-protected property interest in employment that defendants violated. *See Mitchell v. Bd. Of Indus. Ins. Appeals*, 34 P.3d 267, 269-70 (Wash.Ct.App., 2001); *Gossage v. Washington*, 49 P.3d 927, 934 (Wash.Ct.App., 2002).

The district court properly granted summary judgment on Gossage's race discrimination claims under Title VII because he failed to raise these claims first with the EEOC. *See* 42 U.S.C. § 2000e-16(c); *Sommatino v. United States*, 255 F.3d 704, 708 (9th Cir. 2001).

Gossage's remaining contentions lack merit.

AFFIRMED.